

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BRANDON BOONE DREWRY,)
)
)
Plaintiff)
)
v.) Civil No. 06-65-B-W
)
CUMBERLAND COUNTY JAIL, et al.,)
)
)
Defendants)

ORDER GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS

Plaintiff, an inmate at the Cumberland County Jail, Portland, Maine, seeks leave to proceed *in forma pauperis*. The Application to proceed *in forma pauperis* has been completed and is accompanied by a Certificate signed by an authorized individual from the Institution. The Certificate evidences that the applicant has \$0.02 in his account as of May 23, 2006; that over the last six months the average monthly deposits have been \$17.50 and the average monthly balance has been \$17.50. However, the court's review of the inmate cash account statement lists activity for only five months from October 2005 to February 2006. That information evidences that the average monthly deposits amount to \$21.00 and the average monthly balance is \$33.67.

The application is GRANTED, however, pursuant to 28 U.S.C. section 1915(b)(1), Plaintiff is required to pay the entire filing fee in this matter as funds become available. An initial partial filing fee is hereby ASSESSED in the amount of \$6.73. In the event Plaintiff elects to proceed with this matter and so notifies the Court, the initial partial filing fee shall be forwarded by the institution as soon as funds are available. Subsequent payments **of twenty percent (20%) of Plaintiff's prior monthly income** shall

be forwarded directly **by the institution** each time the amount in the inmate's account exceeds \$10.00 until such time as the entire filing fee of \$350.00 has been paid. Plaintiff is advised that, in the event he is released from incarceration prior to the filing fee of \$350.00 being paid in full, he is still required to pay the entire filing fee, absent further order of the court relieving him of the obligation.

In addition, Plaintiff is hereby on notice that the Court may dismiss this action if it:

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b). If the Court does dismiss the action under this section, Plaintiff will still be required to pay the filing fee in full.

On his complaint Drewry has indicated that there is an administrative grievance procedure at the Cumberland County Jail and that he has not presented the facts relating to his claim to the jail through that procedure. Before he decides to incur the costs of this complaint Drewry should take note of 42 U.S.C. § 1997e(a) which provides that: 'No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Drewry is also hereby on notice that a prisoner with three in forma pauperis actions dismissed under section 1915(e) may not thereafter, absent "imminent danger of serious physical injury," file a new action without prepayment of the entire filing fee. 28 U.S.C. § 1915(g).

Now therefore, Plaintiff shall notify the Court no later than June 30, 2006, whether he intends to incur the cost of the filing fee and proceed with this action, or whether he intends to forego this litigation at this time. If Plaintiff elects to proceed, the written notification shall clearly indicate that Plaintiff understands his obligation to pay the full \$350 filing fee as funds are available, and that he nevertheless

wishes to proceed with the action. Failure to fully comply with this Order will result in the issuance of a recommendation to dismiss the Complaint. A copy of this Order shall be forwarded to the Business Office of the Cumberland County Jail, Portland, Maine, ***following Plaintiff's indication to the Court that he intends to go forward with this matter and incur the \$350.00 cost of suit.***

SO ORDERED.

Dated May 30, 2006.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge